

inmate calling rates.^{11/} At best there is only cursory and anecdotal allegations about high rates, but nothing that establishes that there is an industry-wide problem.^{12/}

To the contrary, the record establishes that the rates for inmate calling rates are by and large being "capped" through the government contracting process that providers must go through in seeking facility contracts. For example, VAC supplied data showing that over the past 18 months, 86% of the Requests for Proposals ("RFPs") of various County and State facilities have required rate ceilings that were either tied to dominant carrier rates, or ultimately awarded to a provider who offered dominant carrier rates. VAC Comments at Exhibit 1.

VAC's data further shows that at the state level, the recent RFPs of at least ten (10) state Department of Corrections ("DOCs") (Colorado, Illinois, Georgia, Louisiana, Pennsylvania, Massachusetts, Mississippi, New Jersey, Oklahoma and Wisconsin) have required rate ceilings. ICSPTF has also received similar data from state DOCs and can add the following seventeen (17) states to VAC's list: Alaska, California, Connecticut, Florida, Maine, Maryland, Minnesota, New York, Nevada, Ohio, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia and Washington. Thus,

^{11/}See, e.g., Gateway Comments at 10-12; and VAC Comments at 4-5 and related attachments.

^{12/}For example, in its initial *ex parte* comments, C.U.R.E. provided examples of what it claims were unreasonable rates based on letters it had received from certain inmate families. Those allegations, however, were not reliable data, and clearly did not establish a record of industry-wide abuse.

the record shows that at least 27 state DOCs currently have rate ceilings in their contracts. Moreover, every state DOC which has issued an RFP over the last 18 months of which ICSPTF's members are aware has required rate ceilings in their contracts.

As such, ICSPTF agrees with Gateway, VAC and others that to the extent there is a problem with overcharging for inmate calls, it is isolated among a handful of providers. The majority of providers are charging rates that are reasonable and fair. There is simply no basis in fact upon which the Commission could conclude that there is an industry-wide problem with inmate calling rates.

B. Any Resolution Of Overcharging Will Require Enforcement Efforts By The Commission. BPP Would Be An Expensive And Ineffective Rate Enforcement Vehicle. The Commission Should Therefore Use Its Existing Enforcement Powers.

Certain parties have suggested that BPP would cure high rates without Commission involvement. Nothing could be further from the truth. Even after the billions of dollars are spent to implement BPP into the network, BPP would still require that every one of the hundreds of thousands of pieces of CPE throughout the nation be reprogrammed by the owners of that equipment. This will require substantial oversight by the Commission.

Indeed, as the industry atomizes, and the organized inmate calling services industry disappears after BPP, the burden of reprogramming the equipment will be left to thousands of individual jail administrators throughout the nation. These administrators have no particular nexus to the telecommunications industry, and few, if any, have regulatory counsel. Thus, it would take years

before there was a complete understanding by jail administrators of their specific obligations under BPP. Moreover, there will clearly be recalcitrants within this group who refuse to reprogram their equipment, just as there have been a few renegade payphone owners who have refused to comply with the unblocking requirements of TOCSIA. The Commission's enforcement burden is therefore likely to increase after BPP, not go away. And the Commission would be enforcing its rules against sheriffs, jail officials, state and local government officials who cannot reasonably be expected to be familiar with the telecommunications terrain.

Thus, BPP at inmate facilities would merely shift the Commission's enforcement resources from rate scrutiny to phone inspections at thousands of correctional facilities nationwide. Clearly, this type of enforcement would be very expensive and likely to solve nothing in terms of bringing lower rates.

The fact is that any system requires enforcement and policing by the Commission. Even rate ceilings in contracts between corrections officials and providers require enforcement through adherence to the procurement process and general oversight.^{13/}

^{13/}Indeed, a recent article in *The Washington Post* reports an apparent breakdown in the procurement process of an inmate calling services provider for the D.C. Jail and Lorton prison that led to what certainly appears to be overcharging. See, "District Says Bethesda Firm Violated Pay Phone Contract," *Washington Post*, September 7, 1994, Section D2, Col. 3. The Florida Public Service Commission has also cited an isolated instance of overcharging involving a Florida provider where contractual rate ceilings were required. See, Reply Comments of the Florida Public Service Commission at 3. Neither case, however, can fairly or reasonably be the basis for any generalization about other jurisdictions' failure to control rates.

ICSPTF is in full agreement with the approach suggested by Gateway in its comments with regard to those individual providers who may be overcharging -- the Commission should use its enforcement and complaint powers against those providers. The Commission should not tolerate providers who may be charging unreasonable rates. If there is evidence of a provider charging excessive rates, such as suggested by the Washington Post article referred to above, ICSPTF urges the Commission to use its existing enforcement powers to immediately halt that practice.

C. A Reasonable Rate Benchmark Will Assist The Commission With Its Enforcement Duties.

Several parties agree with ICSPTF that a Commission-mandated rate benchmark for inmate calling rates is a more sensible alternative to BPP in terms of rate enforcement. ICSPTF submits that a rate benchmark would help to lessen the Commission's enforcement burden by providing a firm standard that federal, state and local prison and jail authorities can implement into their contracts with providers.

Since filing its initial comments, ICSPTF's members have discussed the rate benchmark issue in more detail. ICSPTF is in the process of formulating specific rate benchmarks. At this stage, ICSPTF has developed a basic framework for an appropriate benchmark.

The Commission should develop a benchmark based upon an evaluation of the current marketplace conditions and prevailing

rates.^{14/} After a prevailing rate has been established, inmate system providers should be required to set rates within a reasonable rate ceiling that is fair to all providers and consumers of inmate calls. Some providers may have to be above that prevailing rate but below the rate ceiling. Providers who charge rates in excess of that ceiling should be subject to Commission investigation and enforcement actions.

A rate ceiling would have several elements. One element is a fixed operator assistance charge. This charge would include all fixed charges; it is akin to current operator assistance charges now prevalent in the public communications industry. No add-ons, premises imposed fees ("PIFs"), special fees, etc. would be permitted.

The second element would be a usage sensitive, i.e., a per minute charge that had a rate ceiling. This rate may be either "postalized" or distance sensitive, but, in any event, the rate ceiling could not be exceeded.

Finally, a second usage sensitive element, that is both "capped" and has a maximum, would be allowed. The purpose of this supplemental charge would be to reflect the particular cost and market conditions faced by individual inmate call system providers. The rate for each increment, e.g., each minute, would be subject

^{14/}Some parties have suggested establishing a rate benchmark tied to the dominant carrier's rates. ICSPTF disagrees with that position. Equating a benchmark to a particular carrier's rates would provide that carrier with an opportunity to undercut the market and drive the smaller providers out of business. This approach is also too burdensome on that particular carrier. It will lead as well to market distortions.

to a ceiling and the total charge on any call for all increments would be subject to a maximum. The first increment, e.g., the first minute, could be "front-loaded" to some degree to reflect call set-up charges and "fixed costs" associated with each call, such as billing and collection, validation, etc. The rate for each additional increment would be considerably less than the rate for the initial increment, and the caller could only be charged for a limited number of increments until the maximum charge allowed were reached.^{15/}

Finally, with regard to enforcement, the Commission should send a public notice to all correctional officials and ICS providers nationwide to inform them about the benchmark. That notice should encourage those officials to follow that benchmark in their contracts with providers. ICSPTF is willing to work with the Commission in establishing such an educational campaign. On the other hand, ICSPTF does not agree with the enforcement proposal in the FNPRM that would exempt from BPP those facilities that charge rates below the predetermined benchmark. For the reasons discussed above and throughout the comments in this proceeding, BPP is a costly, inefficient proposal that will do more harm than good.

^{15/}Calls that are not of sufficient duration would not reach the maximum charge. Once longer calls reached a duration sufficient to incur the maximum charge under this element, the caller could incur no additional charges under this element. (The caller would, however, be subject to continuing usage sensitive (e.g., per minute) charges under the second element described in the text.) Because some calls will be short-duration calls, it will necessarily be the case that the average charge for this element will always be less than the maximum permitted.

The Commission should not, therefore, adopt BPP for any reason, let alone for the sole purpose of enforcing rate compliance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David B. Jeppsen", is written over a horizontal line.

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